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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

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10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 v.
13 DARRYL OWEN WALIZER,
14 Defendant.

2:10-cr-00124-PMP-RJJ

ORDER

Defendant's Motion to
Bifurcate Counts (#22)

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16 This matter comes before the undersigned Magistrate Judge on Defendant's Motion to
17 Bifurcate Counts (#22). The Court also considered the Government's Response (#24) and
18 Defendant's Reply (#28).

19 **BACKGROUND**

20 Defendant, Darryl Owen Walizer was indicted on March 16, 2010 on one count of
21 Coercion and Enticement in violation of 18 U.S.C. § 2422(b) and one count of Commission of a
22 Felony Sex Offense in violation of 18 U.S.C. § 2260A. Walizer has a prior conviction for
23 Solicitation of a Juvenile to Commit a Felony in Bedford County, Virginia, and a prior
24 conviction for Importuning in Wayne County, Ohio. Walizer is required to register as a sex
25 offender.

26 Walizer argues that the counts should be bifurcated because (1) trying the two counts
27 together will substantially prejudice him, (2) evidence of his prior acts would be admissible for
28 count two, but inadmissible for count one, and (3) a limiting jury instruction would be
insufficient to counter the prejudicial effect of trying the charges together.

1 The Government responds by arguing that it is proper to try the two counts together
 2 because (1) they are of the same or similar character, (2) evidence of prior acts is admissible to
 3 prove motive, intent, knowledge, or absence of mistake, and (3) Defendant will not be prejudiced
 4 by trying them together.

5 In reply, Walizer reaffirms the arguments he made in his Motion (#22).

6 DISCUSSION

7 FEDERAL RULES OF CRIMINAL PROCEDURE 14(a) states:

8 If the joinder of offenses or defendants in an indictment, an information, or a
 9 consolidation for trial appears to prejudice a defendant or the government, the
 court may order separate trials of counts, sever the defendants' trials, or provide
 any other relief that justice requires.

10 Rule 14 sets a high standard for a showing of prejudice. *United States v. Vasquez-*
 11 *Velasco*, 15 F.3d 833, 845 (9th Cir. 1994). A defendant must prove "clear," "manifest," or
 12 "undue" prejudice from an un-severed trial that is of such a magnitude that the defendant was
 13 denied a fair trial." *Vasquez-Velasco*. at 845-46 (internal quotations and citations omitted).

14 Walizer is charged in count one of the indictment with Coercion and Enticement in
 15 violation of 18 U.S.C. § 2422(b) and in count two with Commission of a Felony Sex Offense in
 16 violation of 18 U.S.C. § 2260A. Section 2260A states:

17 Whoever, being required by Federal or other law to register as a sex offender,
 18 commits a felony offense involving a minor under section ... 2422 ... shall be
 19 sentenced to a term of imprisonment of 10 years in addition to the imprisonment
 20 imposed for the offense under that provision. The sentence imposed under this
 section shall be consecutive to any sentence imposed for the offense under that
 provision.

21 Walizer was required to register as a sex offender due to previous convictions of Solicitation of a
 22 Juvenile to Commit a Felony in Bedford County, Virginia and Importuning in Wayne County,
 23 Ohio. Walizer argues that evidence regarding these convictions admitted for count two, will
 24 prejudice him as to the charge against him in count one.

25 Here, Walizer has failed to meet the burden required of him. Evidence of his past
 26 convictions would be admissible for his alleged § 2260A violation. This same evidence may be
 27 admissible for his alleged § 2422(b) violations to prove motive, intent, knowledge, or absence of
 28 mistake. Because the evidence would be admissible for both counts, Walizer will not be

1 prejudiced by trying both counts simultaneously. An appropriate jury instruction can limit
2 possible prejudice, if any, during the trial. There is no need to bifurcate the trial at this time.

3
4 **CONCLUSION**

5 Based on the foregoing, and good cause appearing therefore,

6 IT IS HEREBY ORDERED that Defendant's Motion to Bifurcate Counts (#22) is
7 **DENIED.**

8 DATED this 30th day of December, 2010.

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12 ROBERT J. JOHNSTON
13 United States Magistrate Judge
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